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(ADMITTED PRO HAC VICE)

11 Attorneys for Defendants and Counterclaimants  
Dennis Montgomery, Brenda Montgomery,  
and the Montgomery Family Trust

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

**FRIENDLY CAPITAL PARTNERS, L.P., a  
California Limited Partnership,**

Case No. 3:07-CV-250-PMP-VPC

**Plaintiff**

VS.

DENNIS MONTGOMERY, BRENDA  
MONTGOMERY, and the MONTGOMERY  
FAMILY TRUST, a California trust, and  
DOES 1 through 10, individually.

**MOTION TO WITHDRAW AS LOCAL  
COUNSEL**

## Defendants.

## AND RELATED CASES

1 Mark H. Gunderson, Esq. and Gunderson Law Firm, Nevada local counsel for Liner  
2 Grode Stein Yankelevitz Sunshine Regenstreif & Taylor LLP (“Liner”) legal counsel for Dennis  
3 and Brenda Montgomery and The Montgomery Family Trust (“Montgomery”), seek an order  
4 from this Court permitting its withdrawal as Nevada local counsel of record for Montgomery.  
5 This motion is based upon Supreme Court Rules 46, Rule 1.16 of the Nevada Rules of  
6 Professional Conduct, and EDCR 7.40, the attached memorandum of points and authorities, and  
7 the attached affidavit of counsel.

## **SUPPORTING POINTS AND AUTHORITIES**

Nevada Supreme Court Rule 46(2) permits the attorney in an action to be changed prior to judgment or final determination, "upon the order of the court or judge thereof on the application of the attorney or client." Rule 1.16(b) of the Nevada Rules of Professional Conduct states, in relevant part, that a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, the client fails to substantially fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled, or the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client. *See* Nev. R. Prof. Conduct 1.16(b)(1), (5), & (6). In this case, an irreconcilable conflict has arisen between Montgomery and Gunderson Law Firm, that precludes counsel from continuing to represent Montgomery's interests in this case, as Montgomery has failed to substantially fulfill its obligations to its counsel. The refusal by Montgomery to fulfill its obligations to its counsel necessarily undermines counsel's ability to represent Montgomery as required by Nevada's rules governing professional conduct, will render counsel's representation unreasonably difficult, and will result in an unreasonable financial burden on counsel. *See* Affidavit of Mark H. Gunderson, Esq., Exhibit 1. The attorney-client privilege, however, precludes counsel from disclosing the specific nature of the conflicts which have arisen. *Id.*

## **CONCLUSION**

1       Based on the foregoing, and after careful consideration, discussion, review, and research  
2 by counsel, counsel has concluded that withdrawal is required in this matter pursuant to Rule  
3 1.16 of the Nevada Rules of Professional Conduct. Therefore, counsel requests that this Court  
4 enter its order accordingly. If this Motion is granted, the last known address at which  
5 Montgomery may be served with notice of all further proceedings is:

6                     Randall J. Sunshine, Esq. (SBN: CA 137363)  
7                     Ellyn S. Garofalo, Esq. (SBN: CA 158795)  
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10                    1100 Glendon Avenue, 14th Floor  
11                    Los Angeles, California 90024-3503

12                   Dennis and Brenda Montgomery  
13                   3812 94th Avenue N.E.  
14                   Bellevue, WA 98004  
15                   United States of America

16                   Edra Blixseth  
17                   42-765 Dunes View Rd.  
18                   Rancho Mirage, CA 92270-4311

19                   DATED this 22nd day of April, 2009.

20                   GUNDERSON LAW FIRM

21                   By:

22                     
23                   Mark H. Gunderson  
24                   Mark H. Gunderson, Esq.  
25                   Nevada State Bar No. 2134

**CERTIFICATE OF SERVICE**

Pursuant to FRCP 5(b), I certify that I am an employee of the GUNDERSON LAW FIRM, and that on the 22nd<sup>h</sup> day of April, 2009, I caused to be served the within document described as **NOTICE OF LIEN FOR ATTORNEY'S FEES AND COSTS** on the interested parties in this action as stated below:

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*Attorneys for Montgomery Family Trust; Dennis  
Montgomery; and Brenda Montgomery*

[ELECTRONIC] By filing the document(s) electronically with the U.S. District Court and therefore the Court's computer system has electronically delivered a copy of the foregoing documents(s) to the persons listed above at their respective email address.

I declare under penalty of perjury under the laws of the State of Nevada and the United States of America that the foregoing is true and correct. Executed on April 22nd, 2009, at Reno, Nevada.

Colleen Camenisch